

CS FOR HOUSE BILL NO. 149(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 3/14/05

Referred: Finance

Sponsor(s): REPRESENTATIVES RAMRAS, Wilson, Lynn, McGuire, Gatto, Kelly, Foster, Holm, Stoltze

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to controlled substances; relating to the crimes of manslaughter,**
2 **endangering the welfare of a child, and misconduct involving a controlled substance;**
3 **relating to the manufacture of methamphetamine and to the sale, possession, and**
4 **delivery of certain substances and precursors used in the manufacture of**
5 **methamphetamine; relating to listing certain anabolic steroids as controlled substances;**
6 **and providing for an effective date."**

7 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

8 * **Section 1.** AS 11.41.120(a) is amended to read:

9 (a) A person commits the crime of manslaughter if the person

10 (1) intentionally, knowingly, or recklessly causes the death of another
11 person under circumstances not amounting to murder in the first or second degree;

12 [OR]

13 (2) intentionally aids another person to commit suicide;or

(3) knowingly manufactures or delivers a controlled substance in violation of AS 11.71, and a person dies as a direct result of ingestion of the controlled substance; the death is a result that does not require a culpable mental state.

* Sec. 2. AS 11.51.100(c) is amended to read:

(c) In this section,

(1) "building," in addition to its usual meaning, includes any propelled vehicle or structure adapted for overnight accommodation of persons or for carrying on business; when a building consists of separate units, including apartment units, offices, or rented rooms, each unit is considered a part of the same building;

(2) "physically mistreated" means

(A) [(1)] having committed an act punishable under AS 11.41.100 - 11.41.250; or

(B) [(2)] having applied force to a child that, under the circumstances in which it was applied, or considering the age or physical condition of the child, constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation because of the substantial and unjustifiable risk of

(i) [(A)] death;

(ii) [(B)] serious or protracted disfigurement;

(iii) [(C)] protracted impairment of health;

(iv) [(D)] loss or impairment of the function of a body member or organ;

(v) [(E)] substantial skin bruising, burning, or other skin injury;

(vi) [(F)] internal bleeding or subdural hematoma;

(vii) [(G)] bone fracture; or

(viii) [(H)] prolonged or extreme pain, swelling, or injury to soft tissue.

* Sec. 3. AS 11.51.100 is amended by adding new subsections to read:

1 (g) Notwithstanding AS 11.51.130, a person commits the crime of
2 endangering the welfare of a child in the first degree if the person knowingly
3 manufactures or attempts to manufacture methamphetamine in violation of AS 11.71
4 in a building, with reckless disregard that the building is used as a permanent or
5 temporary home or place of lodging for one or more children under 18 years of age.

6 (h) Endangering the welfare of a child in the first degree under (g) of this
7 section is a class C felony.

8 * **Sec. 4.** AS 11.51.130(a) is amended to read:

9 (a) A person commits the crime of contributing to the delinquency of a minor
10 if, being 19 years of age or older or being under 19 years of age and having the
11 disabilities of minority removed for general purposes under AS 09.55.590, the person
12 aids, induces, causes, or encourages a child

13 (1) under 18 years of age to do any act prohibited by state law unless
14 the child's disabilities of minority have been removed for general purposes under
15 AS 09.55.590;

16 (2) under 18 years of age or allows a child under 18 years of age,
17 **under circumstances not proscribed under AS 11.51.100(g),** to enter or remain in
18 the immediate physical presence of the unlawful manufacture, use, display, or delivery
19 of a controlled substance knowing that the manufacture, use, display, or delivery is
20 occurring, unless the child's disabilities of minority have been removed for general
21 purposes under AS 09.55.590;

22 (3) under 16 years of age to be repeatedly absent from school, without
23 just cause; or

24 (4) under 18 years of age to be absent from the custody of a parent,
25 guardian, or custodian without the permission of the parent, guardian, or custodian or
26 without the knowledge of the parent, guardian, or custodian, unless the child's
27 disabilities of minority have been removed for general purposes under AS 09.55.590
28 or the person has immunity under AS 47.10.350 or 47.10.398(a); it is an affirmative
29 defense to a prosecution under this paragraph that, at the time of the alleged offense,
30 the defendant

31 (A) reasonably believed that the child was in danger of physical

1 injury or in need of temporary shelter; and

2 (B) within 12 hours after taking the actions comprising the
3 alleged offense, notified a peace officer, a law enforcement agency, or the
4 Department of Health and Social Services of the name of the child and the
5 child's location.

6 * **Sec. 5.** AS 11.71.020(a) is amended to read:

7 (a) Except as authorized in AS 17.30, a person commits the crime of
8 misconduct involving a controlled substance in the second degree if the person

9 (1) manufactures or delivers any amount of a schedule IA controlled
10 substance or possesses any amount of a schedule IA controlled substance with intent
11 to manufacture or deliver;

12 (2) manufactures any material, compound, mixture, or preparation that
13 contains

14 (A) methamphetamine, or its salts, isomers, or salts of isomers;

15 or

16 (B) an immediate precursor of methamphetamine, or its salts,
17 isomers, or salts of isomers;

18 (3) possesses an immediate precursor of methamphetamine, or the
19 salts, isomers, or salts of isomers of the immediate precursor of methamphetamine,
20 with the intent to manufacture any material, compound, mixture, or preparation that
21 contains methamphetamine, or its salts, isomers, or salts of isomers; [OR]

22 (4) possesses a listed chemical with intent to manufacture any material,
23 compound, mixture, or preparation that contains

24 (A) methamphetamine, or its salts, isomers, or salts of isomers;

25 or

26 (B) an immediate precursor of methamphetamine, or its salts,
27 isomers, or salts of isomer;

28 **(5) possesses methamphetamine in an organic solution with intent**
29 **to extract from it methamphetamine or its salts, isomers, or salts of isomers; or**

30 **(6) under circumstances not proscribed under AS 11.71.010(a)(2),**
31 **delivers**

1 (A) an immediate precursor of methamphetamine, or the
 2 salts, isomers, or salts of isomers of the immediate precursor of
 3 methamphetamine, to another person with reckless disregard that the
 4 precursor will be used to manufacture any material, compound, mixture,
 5 or preparation that contains methamphetamine, or its salts, isomers, or
 6 salts of isomers; or

7 (B) a listed chemical to another person with reckless
 8 disregard that the listed chemical will be used to manufacture any
 9 material, compound, mixture, or preparation that contains

10 (i) methamphetamine, or its salts, isomers, or salts of
 11 isomers;

12 (ii) an immediate precursor of methamphetamine, or
 13 its salts, isomers, or salts of isomers; or

14 (iii) methamphetamine or its salts, isomers, or salts
 15 of isomers in an organic solution.

16 * **Sec. 6.** AS 11.71.020 is amended by adding a new subsection to read:

17 (d) In a prosecution under (a) of this section, possession of nine grams or more
 18 of the listed chemicals ephedrine, pseudoephedrine, phenylpropanolamine, the salts,
 19 isomers, or salts of isomers of those chemicals, or iodine or crystal iodine is prima
 20 facie evidence that the person intended to use the listed chemicals to manufacture, to
 21 aid or abet another person to manufacture, or to deliver to another person who intends
 22 to manufacture methamphetamine, its immediate precursors, or the salts, isomers, or
 23 salts of isomers of methamphetamine or its immediate precursors. The prima facie
 24 evidence described in this subsection does not apply to a person who possesses the
 25 listed chemicals

26 (1) ephedrine, pseudoephedrine, phenylpropanolamine, or the salts,
 27 isomers, or salts of isomers of those chemicals

28 (A) and the listed chemical was dispensed to the person under a
 29 valid prescription; or

30 (B) in the ordinary course of a legitimate business, or an
 31 employee of a legitimate business, as a

- (i) retailer or as a wholesaler;
- (ii) wholesale drug distributor licensed by the Board of Pharmacy;
- (iii) manufacturer of drug products licensed by the Board of Pharmacy;
- (iv) pharmacist licensed by the Board of Pharmacy; or
- (v) health care professional licensed by the state;

(2) iodine or crystal iodine

(A) in the ordinary course of a legitimate business or service as a water treatment plant or a provider of water treatment services or an employee of those businesses or services;

(B) as a retailer, wholesaler, or manufacturer of water treatment or medical or veterinary supplies or an employee of a retailer, wholesaler, or manufacturer.

*** Sec. 7.** AS 11.71.030(a) is amended to read:

(a) Except as authorized in AS 17.30, a person commits the crime of misconduct involving a controlled substance in the third degree if the person

(1) under circumstances not proscribed under AS 11.71.020(a)(2) - (6) [AS 11.71.020(a)(2) - (4)], manufactures or delivers any amount of a schedule IIA or IIIA controlled substance or possesses any amount of a schedule IIA or IIIA controlled substance with intent to manufacture or deliver;

(2) delivers any amount of a schedule IVA, VA, or VIA controlled substance to a person under 19 years of age who is at least three years younger than the person delivering the substance; or

(3) possesses any amount of a schedule IA or IIA controlled substance

(A) with reckless disregard that the possession occurs

(i) on or within 500 feet of school grounds; or

(ii) at or within 500 feet of a recreation or youth center;

or

(B) on a school bus.

*** Sec. 8.** AS 11.71.180 is amended by adding a new subsection to read:

(f) Schedule VA includes, unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances, including their salts, esters, isomers, and salts of esters and isomers if those salts, esters, or isomers promote muscle growth, whenever the existence of these salts, esters, and isomers is possible within the specific chemical designation: anabolic steroids. In this subsection, "anabolic steroids" means any drug or hormonal substance that is chemically and pharmacologically related to testosterone (other than estrogens, progestins, and corticosteroids) and that promotes muscle growth; "anabolic steroids" does not include an anabolic steroid that is expressly intended for administration through implants to cattle or other nonhuman species and that has been approved by the United States Secretary of Health and Human Services for that administration, unless a person prescribes, dispenses, or distributes that type of anabolic steroid for human use; "anabolic steroids" includes the following:

- (1) boldenone;
- (2) chlorotestosterone (4-chlorotestosterone);
- (3) clostebol;
- (4) dehydrochlormethyltestosterone;
- (5) dihydrotestosterone (4-dihydrotestosterone);
- (6) drostanolone;
- (7) ethylestrenol;
- (8) fluoxymesterone;
- (9) formebulone (formebolone);
- (10) mesterolone;
- (11) methandienone;
- (12) methandranone;
- (13) methandriol;
- (14) methandrostenolone;
- (15) methenolone;
- (16) methyltestosterone;
- (17) mibolerone;
- (18) nandrolone;

- (19) norethandrolone;
- (20) oxandrolone;
- (21) oxymesterone;
- (22) oxymetholone;
- (23) stanolone;
- (24) stanozolol;
- (25) testolactone;
- (26) testosterone;
- (27) trenbolone.

* **Sec. 9.** AS 11.71 is amended by adding a new section to article 2 to read:

Sec. 11.71.210. Purchase or receipt of restricted amounts of certain listed chemicals. (a) A person commits the crime of purchase or receipt of restricted amounts of certain listed chemicals if the person purchases or receives more than

(1) nine grams of the following listed chemical, its salts, isomers, or salts of isomers within any 30-day period:

(A) ephedrine under AS 11.71.200(4);

(B) pseudoephedrine under AS 11.71.200(13);

(C) phenylpropanolamine under AS 11.71.200(11);

(2) nine grams of the following listed chemicals within any 30-day period:

(A) iodine under AS 11.71.200(24);

(B) crystal iodine under AS 11.71.200(24).

(b) This section does not apply to a person who lawfully purchases or receives more than nine grams of a listed chemical identified in (a)(1) of this section

(1) that was dispensed to the person under a valid prescription; or

(2) in the ordinary course of a legitimate business, or to an employee of a legitimate business, as a

(A) retailer or as a wholesaler;

(B) wholesale drug distributor licensed by the Board of Pharmacy;

(C) manufacturer of drug products licensed by the Board of

1 Pharmacy;

2 (D) pharmacist licensed by the Board of Pharmacy; or

3 (E) a health care professional licensed by the state.

4 (c) This section does not apply to a person who lawfully purchases or receives
5 more than nine grams of a listed chemical identified in (a)(2) of this section

6 (1) in the ordinary course of a legitimate business as a water treatment
7 plant or a provider of water treatment services or an employee of those businesses or
8 services; or

9 (2) as a wholesaler, retailer, or manufacturer of water treatment or
10 medical or veterinary supplies, or an employee of a retailer, wholesaler, or
11 manufacturer.

12 (d) Purchase or receipt of restricted amounts of certain listed chemicals is a
13 class C felony.

14 * **Sec. 10.** AS 11.71.900(20) is amended to read:

15 (20) "recreation or youth center" means a building, structure, athletic
16 playing field, or playground

17 (A) run or created by a municipality or the state to provide
18 athletic, recreational, or leisure activities for minors; or

19 (B) operated by a public or private agency to provide
20 shelter, training, or guidance for minors.

21 * **Sec. 11.** AS 17.30 is amended by adding a new section to article 1 to read:

22 **Sec. 17.30.090. Dispensation of and registration and record requirements**
23 **for certain listed chemicals.** (a) A wholesaler, manufacturer, or distributor of
24 products containing ephedrine, pseudoephedrine, or phenylpropanolamine, or their
25 salts, isomers, or salts of isomers, or iodine or crystal iodine, shall keep complete
26 records of all transactions involving those products, including the names of all parties
27 involved in the transaction, the date of the transaction, and the amount of the drug
28 products involved. The records shall be kept readily retrievable and separate from all
29 other invoices or records of transactions not involving those products and shall be
30 maintained for not less than three years and must allow for in-person inspection of the
31 records by law enforcement officers.

1 (b) A retailer of a product or substance that contains a detectable quantity of
2 ephedrine, pseudoephedrine, or phenylpropanolamine, their salts, isomers, or salts of
3 isomers, iodine, or crystal iodine may not dispense the substance unless the retailer
4 confirms the identity of the person by valid government-issued photo identification
5 and the retailer requires the purchaser to sign a written log completed by the retailer
6 showing the date of the transaction, name of the purchaser, type of identification and
7 the identification number, and the amount dispensed. The Department of Public
8 Safety and other law enforcement officers shall be allowed access to this log upon
9 request.

10 (c) A person may not offer to sell a product or substance that contains
11 ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts
12 of isomers, iodine, or crystal iodine unless that product is displayed behind a service
13 counter and not accessible to the public or in a secured cabinet or storage area that
14 may only be accessed by the seller.

15 (d) Notwithstanding (a) of this section, if a municipality enacts an ordinance
16 requiring wholesalers, manufacturers, and distributors to report the information
17 maintained under (a) of this section, each wholesaler, manufacturer, and distributor
18 shall regularly report that information to the municipal police department at intervals
19 required in the ordinance.

20 (e) In this section,

21 (1) "distributor" means a person in the state or another state, other than
22 a manufacturer or wholesaler, who sells, delivers, transfers, or in any manner furnishes
23 a drug product described in (a) of this section to a person who is not the ultimate user
24 or consumer of the product;

25 (2) "manufacturer" means a person in the state who produces,
26 compounds, packages, or in any manner initially prepares for sale or use a drug
27 product described in (a) of this section, or a person in another state if the person causes
28 the products to be compounded in, packaged in, or transported to this state;

29 (3) "readily retrievable" means available for inspection without prior
30 notice at the registration address if that address is in the state; if the registration
31 address is outside the state, "readily retrievable" means records must be furnished

1 within three working days by courier, facsimile, mail, or electronic mail;

2 (4) "wholesaler" means a person in the state or another state, other than
3 a manufacturer, who sells, transfers, or in any manner furnishes a drug product
4 described in (a) of this section to another person in the state for the purpose of the drug
5 product's being resold.

6 (f) A violation of (a), (b), or (c) of this section is a class A misdemeanor,
7 punishable upon conviction only by a fine in an amount not to exceed \$10,000. A
8 wholesaler, manufacturer, or distributor that knowingly fails to report as required by
9 (d) of this section is guilty of a violation. In this subsection, "knowingly" has the
10 meaning given in AS 11.81.900(a).

11 * **Sec. 12.** The uncoded law of the State of Alaska is amended by adding a new section to
12 read:

13 **APPLICABILITY.** This Act applies to offenses committed on or after the effective
14 date of this Act.

15 * **Sec. 13.** This Act takes effect July 1, 2005.